

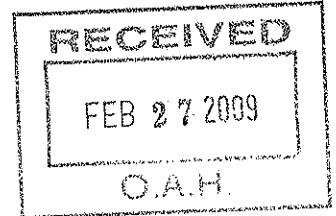
1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Banker License  
3 of:

No. 09F-BD058-BNK

4 **MORTGAGES LTD.**  
4455 E. Camelback Road  
Phoenix, AZ 85018

**NOTICE OF HEARING TO REVOKE**



5 Respondent.

6  
7 PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-138,  
8 and 41-1092.02, the above-captioned matter will be heard through the Office of Administrative  
9 Hearings, an independent agency, and is scheduled for April 16 and 17, 2009, at 9:00 a.m., at the  
10 Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602)  
11 542-9826 (the "Hearing").

12 The purpose of the Hearing is: (1) to determine whether grounds exist to suspend or revoke  
13 Respondent's mortgage banker license; (2) to order any other remedy necessary or proper for the  
14 enforcement of statutes and rules regulating mortgage bankers in Arizona pursuant to A.R.S.  
15 §§ 6-123 and 6-131; and (3) to impose a civil money penalty pursuant to A.R.S. § 6-132.

16 Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of  
17 Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied  
18 or expressed, to the Director of the Office of Administrative Hearings or the director's designee to  
19 preside over the Hearing as the Administrative Law Judge, to make written recommendations to the  
20 Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office  
21 of Administrative Hearings has designated Brian Tully, at the address and phone number listed  
22 above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative  
23 Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the  
24 Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final  
25 decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law  
26 Judge is specifically prohibited from entering.

1 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**  
2 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue  
3 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of  
4 Administrative Hearings.

5 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by  
6 counsel, or to proceed without counsel when submitting evidence, to have a reasonable opportunity  
7 to inspect all documentary evidence, to cross-examine witnesses, to present evidence and witnesses  
8 in support of his/her interests, and to have subpoenas issued by the Administrative Law Judge to  
9 compel attendance of witnesses and production of evidence. Pursuant to A.R.S. § 41-1092.07(B),  
10 any person may appear on his or her own behalf or by counsel.

11 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be  
12 made by a court reporter or by electronic means. Any party that requests a transcript of the  
13 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

14 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant  
15 Attorney General Craig A. Raby, (602) 542-8889, 1275 West Washington, Phoenix, Arizona 85007.

#### 16 **NOTICE OF APPLICABLE RULES**

17 The hearing will be conducted pursuant to A.A.C. R20-4-1201 through R20-4-1220 and the  
18 rules governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through  
19 R2-19-122. A copy of these rules is enclosed.

20 Pursuant to A.A.C. R20-4-1209, Respondent shall file a written answer **within twenty (20)**  
21 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Respondent's  
22 position or defense and shall specifically admit or deny each of the assertions contained in this  
23 Notice of Hearing. If the answering Respondent is without or is unable to reasonably obtain  
24 knowledge or information sufficient to form a belief as to the truth of an assertion, Respondent shall  
25 so state, which shall have the effect of a denial. Any assertion not denied is deemed admitted.  
26 When Respondent intends to deny only a part or a qualification of an assertion, or to qualify an

1 assertion, Respondent shall expressly admit so much of it as is true and shall deny the remainder.

2 Any defense not raised in the answer is deemed waived.

3 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Respondent will be**  
4 **deemed in default** and the Superintendent may deem the findings in this Notice of Hearing as true  
5 and admitted and the Superintendent may take whatever action is appropriate, including (1)  
6 suspension or revocation of Respondent's license; (2) any other remedy necessary or proper for the  
7 enforcement of statutes and rules regulating mortgage bankers in Arizona pursuant to A.R.S.  
8 §§ 6-123 and 6-131; and (3) imposing a civil money penalty pursuant to A.R.S. § 6-132.

9 Respondent's answer shall be mailed or delivered to the Arizona Department of Financial  
10 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or  
11 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,  
12 Arizona 85007 and to Assistant Attorney General Craig A. Raby, Consumer Protection & Advocacy  
13 Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

14 **Persons with disabilities may request reasonable accommodations such as interpreters,**  
15 **alternative formats, or assistance with physical accessibility.** Requests for special  
16 accommodations must be made as early as possible to allow time to arrange the accommodations. If  
17 accommodations are required, call the Office of Administrative Hearings at (602) 542-9826.

### 18 **COMPLAINT**

19 1. Respondent Mortgages Ltd. is an Arizona corporation authorized to transact business in  
20 Arizona as a mortgage banker, license number BK-0007577, within the meaning of A.R.S. §§ 6-941,  
21 *et seq.* The nature of Mortgages Ltd.'s business is that of making, negotiating, or offering to make  
22 or negotiate loans secured by Arizona real property, within the meaning of A.R.S. § 6-941(5).

23 2. Richard M. Feldheim is the President and CEO of Mortgages Ltd.

24 3. Respondent failed to maintain a surety bond, as required by A.R.S. § 6-943(H), while  
25 conducting business as a mortgage banker, which is grounds for denial, suspension or revocation  
26 pursuant to A.R.S. § 6-945(A)(7); specifically:

- a. On or about December 15, 2008, the Department received a Notice of Cancellation or Nonrenewal from Great American Insurance Company advising the Department that Mortgages Ltd.'s Bond, Number 3373981, was cancelled effective January 9, 2009;
  - b. On December 17, 2008, the Department sent a letter via certified mail to Respondent informing it of the bond cancellation and of its statutory obligation as a mortgage banker licensee to replace the cancelled bond. The letter was received and signed for on December 18, 2008;
  - c. On January 15, 2009, the Department received a letter from Respondent, stating that the bond had been canceled in error, it was working on getting its bond reinstated, and asked for a one week extension; and
  - d. The Department still has not received an original bond.
4. Beginning on June 4, 2008, through January 30, 2009, the Department conducted an examination of the mortgage banker business of Mortgages Ltd. and found that Respondent:
- a. Failed to prominently display its mortgage banker license in the office of the mortgage banker as required; specifically:
    - i. The examiners were informed that the mortgage banker license was in one of the second floor offices, and had never been on display in the main lobby of Respondent's building;
  - b. Failed to notify the Superintendent before changing the address of the principal place of business; specifically:
    - i. Respondent changed the address of its principal place of business in March, 2008. The Department was not notified of the address change until April 17, 2008. In addition, the incorrect original license was received with the application for the address change;
    - ii. On December 15, 1999, Respondent informed the Department that it lost its original license during its move from 2833 North Third Street, Phoenix, AZ

- 1 85004 to 55 East Thomas Road, Phoenix, AZ 85012; and
- 2 iii. On April 17, 2008, the Department received the original license from the Third
- 3 Street address that was reported "lost" in 1999 for Respondent's move to 4455
- 4 East Camelback Road, Phoenix, AZ 85018, instead of the correct 55 E. Thomas
- 5 Road original license;
- 6 c. Failed to obtain the Superintendent's prior written consent before control of the
- 7 mortgage banker license was acquired through a stock purchase or other device;
- 8 specifically:
- 9 i. The sole owner of Respondent is the SMC Revocable Trust U/T/A dated
- 10 December 22, 1994, as amended ("SMC Trust"). Scott M. Coles ("Coles") was
- 11 the sole trustee of the SMC Trust. Coles passed away on June 2, 2008 and,
- 12 according to the terms of the SMC Trust, Tom Hirsch ("Hirsch") automatically
- 13 became the successor trustee; and
- 14 ii. Respondent's attorney filed articles of organization for NMLC, LLC, a limited
- 15 liability company organized under the laws of Arizona, on June 9, 2008. On the
- 16 same day, Hirsch executed a proxy granting NMLC, LLC the power to vote all
- 17 shares of the capital stock of NMLC, LLC. This action was a 100% (one
- 18 hundred percent) change of control of the voting shares of Respondent;
- 19 d. Failed to use its license number within regulated advertising in at least four (4)
- 20 advertisements and/or solicitations;
- 21 e. Failed to conduct the minimum elements of reasonable employee investigations prior
- 22 to hiring at least fifteen (15) employees; specifically:
- 23 i. The Employment Eligibility Verification (Form I-9) was incomplete for at least
- 24 one (1) employee;
- 25 ii. Obtained an Employment Eligibility Verification (Form I-9) after the hire date
- 26 of at least six (6) employees;

- 1           iii. A completed and signed employment application was incomplete for at least one  
2           (1) employee;
- 3           iv. The signed statement attesting to all of an applicant's felony convictions,  
4           including detailed information regarding each conviction, was incomplete for at  
5           least one (1) employee;
- 6           v. Conducted an incorrect felony inquiry (ten year limit on convictions) for at least  
7           one (1) employee;
- 8           vi. Failed to consult with the applicant's most recent or next most recent employer  
9           or failed to date said inquiry for nine (9) employees;
- 10          vii. Failed to inquire regarding an applicant's qualifications and competence for the  
11          position or failed to date said inquiry for nine (9) employees;
- 12          viii. Failed to obtain a current credit report from a crediting reporting agency prior to  
13          hiring at least six (6) employees;
- 14          ix. Failed to investigate further after at least three employees' credit report  
15          contained derogatory information; and
- 16          x. Failed to correct this violation from their previous examination;
- 17      f. Failed to keep and maintain at all times correct and complete records clearly reflecting  
18      the financial condition of Mortgages Ltd.; specifically:
- 19          i. Since Respondent did not record a reserve for loan impairment, owned real  
20          estate, a doubtful loan receivable and a demand for payment under a guarantee  
21          of another's debt, its financial statements do not accurately reflect the financial  
22          condition of the business. Had Respondent recorded such a reserve and/or  
23          liability, its equity would have been negatively affected and would have been  
24          stated at negative <\$47.7 million> in its unaudited financial statements dated  
25          May 31, 2008;
- 26      g. Failed to update and reconcile, on a monthly basis, records having more than ten (10)

1 transactions in a calendar quarter; specifically:

- 2 i. Since Respondent's bank accounts incur more than ten transactions during a  
3 calendar quarter, Respondent must reconcile its accounts monthly.

4 Respondent's Tax Impound Account and Collection Trust Account have not  
5 been reconciled, per Respondent's own admission;

6 h. Failed to maintain a complete corporate organizational file; specifically:

- 7 i. The stock ledger and stock certificates maintained by Respondent have not been  
8 updated as required;

- 9 ii. The last issuance date for a new stock certificate for the non voting shares is  
10 November 1, 1995. The last issuance date for a new stock certificate for the  
11 common voting shares is November 1, 1995 as well. These stock certificates  
12 were issued in the name of the SMC-FLC Revocable Trust dated 12/22/94; and  
13 iii. Before his death, the sole trustee amended/restated the trust documents at least  
14 three times. At least one amendment/restatement was a name change to the  
15 Trust, yet the stock transfer ledger does not indicate that a new stock certificate  
16 was issued;

17 i. Made a false promise or misrepresentation or concealed an essential or material fact in  
18 the course of the mortgage banking business; specifically:

- 19 i. Misrepresented loan funding ability:

- 20 1. Respondent approved mortgage loans for construction projects on a "delayed  
21 funding" basis, meaning that a large portion of the approved funds would be  
22 provided to borrowers in increments, at a date later than the initial close  
23 date;  
24 2. Respondent approved mortgage loans with the full knowledge that the funds  
25 required to complete the contractually committed funding were not available  
26 to the company and would have to be satisfied through other means; and

- 1                   3. In at least two instances, Respondent was unable to fund approved  
2                   construction draw requests totaling \$32 million, resulting in borrowers'  
3                   inability to complete construction projects that were already in progress;
- 4           ii. Misrepresented true financial position:
- 5                   1. The May 31, 2008 financial statements misrepresented the true financial  
6                   condition of Respondent because Respondent failed to accrue and record  
7                   various items. Respondent did not record reserves for loan impairment or  
8                   the decline in value of its owned real estate portfolio;
- 9                   2. Respondent did not accrue a reserve for a \$6 million loan to the SMC  
10                  Revocable Trust, whose collectibility is uncertain and did not disclose that it  
11                  had guaranteed a \$12 million loan taken out by SM Coles LLC; and
- 12                  3. The recordation of all relevant adjustments would have had a negative  
13                  impact of \$57.5 million on Respondent's balance sheet. Respondent's  
14                  equity at May 31, 2008 would have gone from \$9.8 million dollars to a  
15                  negative equity of <\$47.7 million>;
- 16       j. Failed to meet at all times its statutorily required minimum net worth of not less than  
17       two hundred fifty thousand dollars (\$250,000.00); specifically:
- 18               i. Respondent's net worth, after all required adjustments as described in the  
19               "Generally Accepted Accounting Principles" violation set forth below would  
20               have been stated at negative <\$47.7 million> as of May 31, 2008;
- 21       k. Respondent is insolvent as defined in A.R.S. § 47-1201(23), which is grounds for  
22       denial, suspension or revocation pursuant to A.R.S. § 6-945(A)(1); specifically:
- 23               i. On June 23, 2008, Respondent filed a motion in the United States Bankruptcy  
24               Court to convert an involuntary petition for a Chapter 7 bankruptcy to a case  
25               under Chapter 11. The Chapter 7 proceeding was brought by certain borrowers  
26               of Respondent;



1           ii. On June 24, 2008, the Bankruptcy Court approved Respondent's motion and  
2           Respondent became the debtor-in-possession with respect to the Chapter 11  
3           proceeding, *In Re Mortgages Ltd.*, U.S. Bankruptcy Court, District of Arizona,  
4           No. 2:08-bk-07465-RJH; and

5           iii. Respondent is insolvent; specifically:

- 6           1. Respondent was unable to pay interest in the amount of \$1.165 million on  
7           \$197 million of Notes Payable due to its primary lender in June, 2008;
- 8           2. Respondent was unable to fund \$32 million of approved draws under  
9           outstanding loan agreements;
- 10          3. Unrecorded reductions in assets or increases in liabilities, amounting to  
11          \$57.5 million, would have caused Respondent's May 31, 2008 unaudited  
12          financial statements to disclose a negative equity of <\$47.7 million>; and
- 13          4. Respondent's future commitment to fund the 46 loans reviewed was \$203  
14          million as of June 30, 2008. Respondent's unaudited financial statements as  
15          of May 31, 2008 indicated that Respondent had less than \$1 million in cash  
16          on hand and no ability to borrow the needed funds;

17          l. Failed to furnish information to the Superintendent within a reasonable time, which is  
18          grounds for denial, suspension or revocation pursuant to A.R.S. § 6-945(A)(3);  
19          specifically:

- 20          i. During the course of the examination, Respondent was asked to provide  
21          financial statement information on the SMC Revocable Trust and SM Coles  
22          LLC. Respondent made a loan to the SMC Revocable Trust in the amount of  
23          \$6 million, and the collectibility of the note was in question. Numerous  
24          transactions occurred between Respondent and SM Coles LLC. An  
25          understanding of these transactions was sought to determine what effect they  
26          might have on the company; and

- 1           ii. Respondent's CFO was asked to provide the aforementioned information, but  
2           the information was never provided;
- 3       m. Failed to maintain a statutorily correct trust subsidiary ledger and failed to verify each  
4       trust balance to each trust subsidiary ledger at reconciliation; specifically:
- 5           i. Failed to include in Respondent's trust subsidiary ledger for the tax impound  
6           account provisions for:
- 7               1. Amount received;
- 8               2. Date received;
- 9               3. Date deposited into the trust account;
- 10              4. Amount disbursed;
- 11              5. Date disbursed; and
- 12              6. Disbursement's payee and purpose;
- 13           ii. Failed to reconcile each trust balance to each trust subsidiary ledger at each  
14           reconciliation; and
- 15           iii. Failed to correct this violation from its previous examination;
- 16       n. Failed to observe Generally Accepted Accounting Principles ("GAAP") in preparation  
17       of its financial statements; specifically:
- 18           i. In its May 31, 2008 unaudited financial statements, Respondent:
- 19               1. Failed to record mortgages held for investment and sale at the lower of cost  
20               or fair market value;
- 21               2. Failed to recognize that the cost of their mortgages held as security for  
22               RevOp investors exceeded their fair market value;
- 23               3. Failed to recognize the decline in fair market value of its real estate  
24               investments held for sale;
- 25               4. Failed to assess the collectibility of a \$6 million note receivable from a  
26               related party, and failed to record an allowance against such note; and

5. Failed to record a \$0.9 million dollar demand made for a \$12 million dollar loan guaranteed by Respondent for another party (related); and

ii. Based upon the instances listed above, Respondent would have \$57.5 million in adjustments as either a reduction in assets or an increase in liability;

5. The conduct described above constitutes grounds for revocation of Respondent's mortgage banker license.

LAW

1. Pursuant to A.R.S. Title 6, Chapter 9, the Superintendent has the authority and duty to regulate all persons engaged in the mortgage banker business and with the enforcement of statutes, rules, and regulations relating to mortgage bankers.

2. By the conduct set forth above in the Complaint, Mortgages Ltd. violated the following:

a. A.R.S. § 6-943(H) by failing to maintain the required surety bond, which is grounds for denial, suspension or revocation pursuant to A.R.S. § 6-945(A)(7);

b. A.R.S. § 6-944(D) and A.A.C. R20-4-1805 by failing to prominently display its mortgage banker license in the office of the mortgage banker as required;

c. A.R.S. § 6-944(E) by failing to notify the Superintendent before changing the address of the principal place of business;

d. A.R.S. § 6-944(A) by failing to obtain the Superintendent's prior written consent before control of the mortgage banker license was acquired through a stock purchase or other device;

e. A.R.S. §§ 6-943(N) and 6-946(E) by failing to use its license number within regulated advertising in at least four (4) advertisements and/or solicitations;

f. A.R.S. § 6-943(O) and A.A.C. R20-4-102 by failing to conduct the minimum elements of reasonable employee investigations prior to hiring at least fifteen (15) employees;

g. A.R.S. § 6-946(A) by failing to keep and maintain at all times correct and complete records clearly reflecting the financial condition of Mortgages Ltd.;

- h. A.A.C. R20-4-1806(C) by failing to update and reconcile, on a monthly basis, records having more than ten (10) transactions in a calendar quarter;
- i. A.A.C. R20-4-1806(B)(9) by failing to maintain a complete corporate organizational file;
- j. A.R.S. § 6-947(L) by making a false promise or misrepresentation or concealing an essential or material fact in the course of the mortgage banking business;
- k. A.R.S. § 6-943(C)(3)(b) by failing to meet at all times its statutorily required minimum net worth of not less than two hundred fifty thousand dollars (\$250,000.00);
- l. A.R.S. § 6-945(A)(1) by its insolvency as defined in A.R.S. § 47-1201(23);
- m. A.R.S. § 6-945(A)(3) by failing to furnish information to the Superintendent within a reasonable time, which is grounds for denial, suspension or revocation;
- n. A.A.C. R20-4-1806(B)(5), by failing to maintain a trust subsidiary ledger and failing to verify each trust balance to each trust subsidiary ledger at reconciliation; and
- o. A.R.S. § 6-946(B) and A.A.C. R20-4-102 by failing to observe generally accepted accounting principles in preparation of its financial statements.

3. Respondent is insolvent within the meaning of A.R.S. § 47-1201(23), which is grounds for the suspension or revocation of Respondent's mortgage banker license, pursuant to A.R.S. § 6-945(A)(1)

4. Respondent failed, within the reasonable time, to furnish any information or make any report as required by the Superintendent, which is grounds for the suspension or revocation of Respondent's mortgage banker license, pursuant to A.R.S. § 6-945(A)(3).

5. Respondent failed to maintain the required surety bond, a violation of A.R.S. § 6-943(H), thereby failing to conduct business in accordance with the law and violating A.R.S. Title 6, Chapter 9 and the rules related to Chapter 9, which is grounds for the suspension or revocation of Respondent's mortgage banker license, pursuant to A.R.S. § 6-945(A)(7).

6. The violations, set forth above, constitute grounds for the pursuit of any other remedy

1 necessary or proper for the enforcement of statutes and rules regulating mortgage bankers in Arizona  
2 pursuant to A.R.S. §§ 6-123 and 6-131.

3 7. Pursuant to A.R.S. § 6-132, Respondent's violations of the aforementioned statutes are  
4 grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for  
5 each day.

6 WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the  
7 above described violations or other grounds for disciplinary action, the Superintendent may: (1)  
8 suspend or revoke Respondent's mortgage banker license pursuant to A.R.S. § 6-945; (2) order any  
9 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage  
10 bankers in Arizona under A.R.S. §§ 6-123 and 6-131; and (3) impose a civil money penalty pursuant  
11 to A.R.S. § 6-132.

12 DATED this 27 day of February, 2009.

13 Felecia A. Rotellini  
14 Superintendent of Financial Institutions

15 By Robert D. Charlton  
16 Robert D. Charlton  
Assistant Superintendent of Financial Institutions

17 ORIGINAL of the foregoing filed this 27<sup>th</sup>  
18 day of February, 2009, in the office of:

19 Felecia Rotellini  
20 Superintendent of Financial Institutions  
21 Arizona Department of Financial Institutions  
22 ATTN: Susan Longo  
23 2910 N. 44th Street, Suite 310  
24 Phoenix, AZ 85018

25 COPY mailed/delivered same date to:

26 Brian Tully, Administrative Law Judge  
Office of the Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, AZ 85007

1 Craig A. Raby, Assistant Attorney General  
Attorney General's Office  
2 1275 West Washington  
Phoenix, AZ 85007

3 Robert D. Charlton, Assistant Superintendent  
4 Richard Fergus, Licensing Division Manager  
Joan Doran, Senior Examiner  
5 Arizona Department of Financial Institutions  
2910 N. 44th Street, Suite 310  
6 Phoenix, AZ 85018

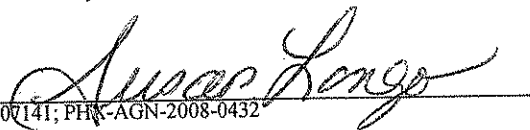
7 AND COPY MAILED SAME DATE, by  
Certified Mail, Return Receipt Requested to:

8 Mortgages Ltd.  
9 c/o Richard M. Feldheim, President and CEO  
4455 E. Camelback Road  
10 Phoenix, AZ 85018

11 Mortgages Ltd.  
c/o Christopher J. Olson, Chief Financial Officer  
12 4455 E. Camelback Road  
Phoenix, AZ 85018

13 George A. Everette, Statutory Agent For:  
14 Mortgages Ltd.  
4455 E. Camelback Road  
15 Phoenix, AZ 85018

16 Carolyn J. Johnsen, Esq.  
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19 Attorneys for Respondent

20   
21 407141; PHX-AGN-2008-0432